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NUCLEAR REGULATORY COMMISSION

[NRC-2014-0131]

Open Phase Conditions in Electric Power System

AGENCY: Nuclear Regulatory Commission.

ACTION: Branch technical position-final; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final version of Branch Technical Position (BTP) 8-9, "Open Phase Conditions in Electric Power System," of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition."

DATES: The effective date of this Branch Technical Position is **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please refer to Docket ID **NRC-2014-0131** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0131**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final version for BTP 8-9, “Open Phase Conditions in Electric Power System,” is available under ADAMS Accession No. ML15057A085. A redline strikeout comparing the proposed and final revision of the document can be found in ADAMS under Accession No. ML15056A316.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- The NRC posts its issued staff guidance on the NRC’s external Web page (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>).

FOR FURTHER INFORMATION CONTACT: Mark D. Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-6992, e-mail: Mark.Notich@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background.

On June 5, 2014 (79 FR 32580), the NRC published for public comment the

proposed version of BTP 8-9, "Open Phase Conditions in Electric Power System," in Chapter 8, "Electrical Power," of NUREG-0800. The staff received many comments on the draft BTP. A summary of the comments and the staff's disposition of the comments are available in a separate document, "Response to Public Comments on Draft Standard Review Plan, BTP 8-9, Open Phase Conditions in Electric Power System" (ADAMS Accession No. ML15056A521). The BTP is guidance to the NRC Staff for reviewing applications for licenses for nuclear power reactors under 10 CFR parts 50 and 52 and amendments to licenses issued under parts 50 and 52. The NRC Staff intends to reference the BTP in NUREG-0800 for the same purpose.

II. Backfitting and Issue Finality.

Branch Technical Position 8-9 provides guidance to the staff for reviewing applications for a construction permit and an operating license under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities," with respect to compliance with General Design Criteria 17, "Electric Power Systems," of Appendix A, "General Design Criteria for Nuclear Power Plants." BTP 8-9 also provides guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," with respect to those same subject matters.

Issuance of BTP 8-9 does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The BTP 8-9 positions would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The BTP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *Application of BTP 8-9 to existing licensees.*

The NRC staff may consider imposing the positions described in the BTP on existing licenses, the NRC staff will address backfit considerations in any plant-specific action it takes. If, in the future, the NRC staff seeks to impose a position in the BTP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the BTP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act.

This action is a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 22nd day of July, 2015.

For the Nuclear Regulatory Commission.

Lawrence Burkhardt, Acting Chief,
New Reactor Rulemaking and Guidance Branch,
Division of Advanced Reactors and Rulemaking,
Office of New Reactors.

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